

interest against the United States) will be deducted from the amount otherwise payable.

(b) If there is a remedy against the State or its insurer, the claimant may be advised of that remedy. If the payment by the State or its insurer does not fully compensate claimant, an additional payment may be made under §§ 536.70 through 536.81. If liability is clear and claimant settles with the State or its insurer for less than the maximum amount recoverable, the difference between the maximum amount recoverable from the State or its insurer and the settlement normally will be also deducted from the payment by the United States.

(c) If the State or its insurer desires to pay less than their maximum jurisdiction or policy limit on a basis of 50 percent or more of the actual value of the entire claim, any payment made by the United States must be made directly to the claimant. This can be accomplished by either having the United States pay the entire claim and have the State or its insurer reimburse its portion to the United States, or by having each party pay its agreed share directly to the claimant. If the State or its insurer desires to pay less than 50 percent of the actual value of the claim, the procedure set forth in paragraph (d) of this section will be followed.

(d) If there is a remedy against the State and the State refuses to make payment, or there is insurance coverage and the claimant has filed an administrative claim against the United States, forward file with a memorandum of opinion to the Commander, USARCS, including information as to the status of any judicial or administrative action the claimant has taken against the State or its insurer. The Commander, USARCS, will determine whether the claimant will be required to exhaust his remedy against the State or its insurer, or whether the claim against the United States can be settled without such requirement. If the Commander, USARCS, determines to follow the latter course of action, he will also determine whether an assignment of the claim against the State or its insurer will be obtained and whether recovery action will be taken. The

State or its insurer will be given appropriate notification in accordance with State law necessary to obtain contribution of indemnification.

**§ 536.77 Claims against the ARNG tortfeasor individually.**

The procedures set forth in § 536.9(f) are applicable. With respect to claims arising before 29 December 1981, an ARNG driver acting pursuant to the authorities cited in § 536.73(a) is not protected by the provisions of the Drivers Act (28 U.S.C. 2670(b)) and the driver may be sued individually in State court. When this situation occurs, it should be monitored closely by ARNG authorities. If possible an early determination will be made as to whether any private insurance of the ARNG tortfeasor is applicable. Where such insurance is applicable and the claim against the United States is of doubtful validity, final actions will be withheld pending resolution of the demand against the ARNG tortfeasor. If, in the opinion of the claims approving or settlement authority, such insurance is applicable and the claim against the United States is payable in full or in a reduced amount, settlement efforts will be made either together with the insurer or singly by the United States. Any settlement will not include amounts recovered or recoverable as in § 536.9. If the insurance is not applicable, settlement or disapproval action will proceed without further delay.

**§ 536.78 When claim must be presented.**

A claim may be settled under §§ 536.70 through 536.81 only if presented in writing within 2 years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after war or armed conflict is terminated. As used in this section, a war or armed conflict is one in which any Armed Force of the United States is engaged. The dates of commencement and termination of an armed conflict must be established by concurrent resolution of Congress or by determination of the President.